

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLEE AND JOINT APPENDIX

IN THE
United States Court of Appeals
For the District of Columbia Circuit

No. 13,131

SAMUEL D. WRIGHTSON, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court
For the District of Columbia

OLIVER GASCH,
United States Attorney,

LEWIS CARROLL,
ARTHUR J. McLAUGHLIN,
NATHAN J. PAULSON,
*Assistant United States
Attorneys*.

QUESTIONS PRESENTED

Where the facts disclose that the police began an investigation of an armed robbery on July 17, 1953; that on July 28, 1953, at 2 a.m. an informer advised a police officer that a person by the name of Sam and three others had committed the felony and stolen the money and the government checks and that he would try to ascertain their names and where they were; that the next morning, July 29, 1953, at 2 a.m., the informer advised the police that one of the criminals was Samuel Wrightson, the appellant, and he was at the moment at a certain apartment in Southeast Washington, the address of which he did not know; that the informer led the police to the apartment house and pointed out the exact apartment; that the police then surrounded the house and entered the apartment without force and arrested appellant; that a metal box similar to the one stolen was in open view of the police along with cartridges the gun for which was produced by appellant upon request; that the police seized said evidence; that after appellant was indicted he filed a motion to suppress the evidence; that the testimony at the hearing fails to disclose either a property right or proprietary interest in the apartment on the part of appellant; the following questions, in the opinion of the appellee, are presented:

1. Did the trial court err in denying appellant's motion to suppress on the ground that the arrest was illegal?

2. Where the police have knowledge that a felony has been committed and then receive information from an informer who is considered reliable and who in the past has been reliable does sufficient probable cause exist to make an arrest without warrant where they have been informed that the felons are going to leave the city?

3. Is it incumbent upon appellant to allege and prove that he has a proprietary interest or property right in premises in order to assert a violation of his constitutional right under the Fourth Amendment?

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**Appeal from the United States District Court
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On August 24, 1953 appellant was indicted for robbery in violation of District of Columbia Code § 22-2901 (R. 192). After conviction this Court reversed and remanded the case for a new trial. *Wrightson v. United States*, — U.S. App. D.C. —, 222 F. 2d 556 (1955). On October 27, 1955 appellant filed a motion to quash his arrest and to suppress certain evidence, which came on for hearing before trial (R. 158-191), which was denied on November 8, 1955 (R. 198). After being convicted at the new trial by a jury, appellant was sentenced to serve a term of imprisonment of from

three and one-half to ten and one-half years, to commence at the expiration of the sentence being served in Criminal Case No. 1331-53 (R. 200). This appeals follows (R. 210).

At the preliminary hearing on the motion to quash the arrest and suppress evidence *Lieutenant Nunzio Bonaccorsy*, Metropolitan Police Department, testified that on July 29, 1953 he went to appellant's apartment and gained admission thereto at approximately 5:30 a.m. by knocking on the door and telling the occupants that he was investigating a fight (R. 167). Upon being admitted, he asked which one of the several male occupants was Samuel Wrightson, and when appellant answered, he was placed under arrest for investigation for robbery. (R. 170). While in the apartment Lieutenant Bonaccorsy saw a metal box on the top of the dresser similar to the one used in the robbery to carry the stolen money from the store. A box of bullets was also on the dresser and when asked where the gun was that went with the bullets, appellant said it was under the pillow. The gun was so found and was fully loaded (R. 178). The officer stated that he did not have either an arrest or a search warrant.

On cross-examination, Lieutenant Bonaccorsy said that he had learned that the Food Fair Market had been robbed on July 17, 1953 and had been conducting an investigation since that date. On July 28, 1953, at about 2 a.m., he received information from an informer who knew something about the robbery but who did not know the names of the participants (R. 174). The following morning, July 29, 1953, the officer was contacted by the informer about 2:30 a.m. and was told that one of the participants in the robbery was one Samuel Wrightson, who lived in the Southeast part of Washington, D. C. near Naylor Road. The officer was told that the suspect was making plans to get out of town (R. 175). He testified that he had received information from this informer on previous occasions which had turned out to be reliable (R. 176). They drove to the area where appellant lived. The informer then pointed out the apartment and Lieutenant Bonaccorsy made arrangements to have it covered since it was a ground floor apartment. He

had previously learned that a metal box had been used in carrying the stolen money from the store, and he had seen a picture of such a box (R. 177).

Appellant testified that the police came to the apartment, knocked on the door and said there were signs in the hall that a fight had taken place and that they were investigating it. When admitted to the apartment, the officers asked which one was Wrightson (R. 183), but never told him he was under arrest until they were taken to the police station. He said they ransacked the apartment and took the metal box and bullets on the dresser, as well as the gun under the pillow (R. 184). When asked whether he was working at the time appellant said (R. 185), "I run a poker game." He did not run the poker game in this apartment (R. 187). On November 8, 1955 the court entered its order denying the motions to quash the arrest and suppress the evidence (R. 198).

At the outset of the trial on January 3, 1956, appellant renewed his motion to suppress (R. 2), which was denied (R. 6). *Lieutenant Nunzio Bonaccorsy* was called as the first Government witness (R. 207). His testimony was similar to that given at the preliminary hearing on the motion to suppress. He described for the jury the arrest of appellant, the search of his apartment, and the questioning and confession at police headquarters. When the metal box taken from appellant's apartment was shown to the officer for identification, appellant objected and asked for a hearing out of the jury's presence, so the jury was excused (R. 208), and the questioning proceeded with appellant as the moving party. At one point the court asked the officer why he had gone to appellant's apartment in the first place, and he answered (R. 211):

"Your Honor, about 2:30 that morning I received—about 2 o'clock on the morning previous, on July 28, I received information that a man by the name of Sam, he didn't know his full name nor his address, was responsible for the holdup of the Acme Market, and he said, the informant told me, that he would get me the address and full name."

After further testimony the court denied the motion (R. 221), and the jury returned. When asked about the metal box, Lieutenant Bonaccorsy said it was the box taken in the holdup of the Acme Super Market (R. 221). He was then asked what he had asked appellant about the robbery at 3041-Naylor Road, Southeast (R. 223), and appellant told him that the box was the one that came out of the Acme Market, which he said is Mr. Soper's store on Naylor Road (R. 226).

On cross-examination the lieutenant was asked why he was at appellant's apartment on July 29, 1953 and he answered that he was there to arrest him for the holdup of the Acme Market. Appellant thereupon immediately asked for a mistrial (R. 230). At the bench it was developed that appellant had already been convicted for the robbery of the Acme Market. The court denied the motion but told the Government to get its names straight. After eliciting further details about the arrest and questioning of appellant, Lieutenant Bonaccorsy was excused.

William H. Soper, manager of the Food Fair Supermarket at 3104-Naylor Road, Southeast, Washington, D. C., testified that on July 17, 1953 he left the store about 9:45 p.m. after locking \$7,000 in cash and \$3,000 in checks in the store safe (R. 23). After he had entered his automobile a man approached, got in the car and at gun point ordered him to drive to the corner and then return to the store. When they arrived back at the store parking lot three other men joined them. Accompanied by two of the men, Mr. Soper was forced to unlock the store, and then unlock the safe. He was told to take the money from the safe and put it in a tin box. Since one of the men was holding a gun on his back (R. 27), the witness said he complied with their order (R. 29). He identified the box at the trial (Government's Exhibit No. 1) as the one taken from the store (R. 30).

Mr. Soper said that at 11 a.m. on July 29, 1953, he was summoned to police headquarters, where he saw appellant (R. 31). He heard him make a statement that he had (R. 32), "cased the place" twice and was the leader in the

holdup. He heard appellant tell the details of the robbery, of splitting up the cash with the other three participants, and of burning the checks. On cross-examination, the witness said he never saw appellant during the armed robbery because he was always behind him (R. 33).

George J. Smith, district supervisor of the Square Deal Market, Incorporated, of which Food Fair is a member, testified that he was present at the police station on July 29, 1953 and heard appellant admit that he was responsible for the robbery, and heard him tell various details of the crime (R. 42). *Mr. E. Riley Casey*, Assistant United States Attorney, testified that he was called to police headquarters on July 29, 1953 at the request of appellant who wanted to talk with a member of the United States Attorney's office. He said he told appellant he would make him no promises for anything he might wish to say (R. 51). Then appellant described the robbery and his part in it. Mr. Casey noted that appellant was dressed in expensive looking clothes, and explained that he had spent most of the stolen money for the clothing. (R. 54).

Detective Malcolm R. Luebker, Metropolitan Police Department, testified that he participated in the arrest and questioning of appellant (R. 57). Appellant told him that he knew he was caught and wanted some consideration from the court, and he accompanied the police to an address on 4th Street where he said one of the other participants lived. This was about 9 a.m. on July 29, 1953 (R. 63). Upon returning to headquarters appellant told the police the names of the other three participants and told the details of the robbery and his participation therein (R. 65). Detective Luebker said that appellant gave them permission to search his apartment (R. 70). Although the police questioned appellant three or four hours, he admitted within ten or fifteen minutes that he was implicated (R. 73). The Government closed its evidence with the testimony of Officer Luebker (R. 78).

After making and having denied a motion for a judgment of acquittal, appellant called *Thomas F. Gordon*, who said he was presently imprisoned at Lorton (R. 84). He was

present for an immoral purpose in appellant's apartment at the time of the arrest, and described the entry of the police, the search of the apartment, and the arrest of appellant (R. 86-89). *Appellant* testified that when the police entered his apartment they did not tell him what they wanted or why they were conducting the investigation (R. 92). When the police took appellant to the Robbery Squad room they started asking him about the robbery, and appellant told them he did not know anything about it (R. 94). He said that the conversation then got around to his *former* wife (R. 94), to whom he had recently given \$500 so that she could go to California. The police told him that unless he confessed they would bring her back from the West Coast. Then appellant testified that he confessed because the police promised not to involve his wife and also promised to be lenient with him (R. 95). He stated that his confession was made up solely to protect his wife from being investigated. Appellant said he did not describe how the crime took place, but merely answered the policemen's questions by saying (R. 97), "Yeah, that is what happened; yeah; all right, that is how it happened; yeah, that is all right." Among the other denials made by appellant on the stand was a denial that he had on expensive clothes when arrested (R. 97); a denial that he suggested that the District Attorney be called (R. 95); a denial that Lieutenant Bonaccorsy made no promises to him (R. 98); that he thought the apartment was registered under his *former* wife's name (R. 105); a denial that the gun found in his apartment was his (R. 111); a denial that he told the police who the other participants in the robbery were and where they could be found (R. 114). As a factor in weighing appellant's credibility against the credibility of Assistant United States Attorney Casey, Lieutenant Bonaccorsy, Detective Leubkert and Mr. Soper, the jury heard appellant admit that he had been convicted of three housebreakings in 1950 (R. 99).

Lieutenant Bonaccorsy was recalled in rebuttal by the Government after appellant had closed his evidence, and testified that he had made no promises to appellant and

also stated that it was appellant who had requested that the United States Attorney be called (R. 124).

STATUTE AND RULE INVOLVED

Federal Rules of Criminal Procedure, 18 U.S.C., Rule 41:

(e) MOTION FOR RETURN OF PROPERTY AND TO SUPPRESS EVIDENCE. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion *shall be made before trial or hearing* unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

Rule 52:

(b) PLAIN ERROR. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

District of Columbia Code, Title 22, Section 2901:

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

SUMMARY OF ARGUMENT

The police officers had probable cause to arrest appellant and to make a seizure of the gun and metal box incident to the arrest.

On July 17, 1953, Lieutenant Bonaccorsy, of the Metropolitan Police was assigned to and began an investigation of an armed robbery which had taken place at a supermarket at 3041 Naylor Road, S. E., Washington, D. C.

During his investigation and on July 28, 1953 at 2:00 a.m. he received information from an informer that a person by the name of Sam and three others had committed the felony and that he, the informer, would try to get their names and addresses. The next morning, July 29, 1953, at 2:00 a.m. the informer advised the police that one of the men was appellant and he was in an apartment in southeast Washington with several other people and he was preparing to leave town. Precautionary steps were taken and at 5:30 a.m. of the same morning, the police without force, entered the apartment and placed appellant under arrest. A gun and a metal box were seized in the apartment. Appellant's motion to suppress the evidence upon the ground that the arrest was illegal and the search incident to the arrest was illegal is without merit.

Where police have knowledge of a felony and receive information from an informer who is considered reliable and whose reliability in the past has been proven, they have probable cause to make an arrest without a warrant. Any search incident to such legal arrest is not in violation of the Fourth Amendment.

Appellant failed to sustain his burden of proof that his personal rights under the Fourth Amendment were violated since he made no affirmative showing of a property right or a proprietary interest in the property alleged to have been illegally searched. In fact the trial judge, in the exercise of his sound discretion after hearing the witnesses, and weighing their credibility, could arrive at a decision that appellant had no personal or property rights violated, and that the arrest, search and seizure were not unreasonable.

ARGUMENT

I

Sufficient Probable Cause to Believe That Appellant Had Committed the Crime Was Shown and Justified the Arrest: The Search Was Reasonable in Scope, Incidental to Arrest and Was Therefore Legal. The Evidence Seized at the Time Was Properly Received Into Evidence on the Trial.

A search and seizure of fruits of a crime is lawful when carried out incident to the arrest of a person for whom there is probable cause to believe that such person had committed a felony. What constitutes probable cause cannot be molded into any single and concise meaning. Each case must be considered on its own peculiar facts and interpreted in the light of all the circumstances.

Probable cause consists of more than mere suspicion of guilt. But, on the other hand, the concept of probable cause by its very nature involves probabilities, and the standard of proof is not the same as that required at trial. The evidence known to the arresting officer need not amount to proof of guilt, and need not be of such a nature as to be admissible against the defendant on actual trial. The Supreme Court, in *Brinegar v. United States*, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. (1949) stated at pages 173-176:

* * * (There is a) difference between what is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search. * * * There is a large difference between the two things to be proved, as well as between the tribunals which determine them and therefore a like difference in the quanta and modes of proof required to establish them.

* * * *

In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the *factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act*. The standard of proof is accordingly correlative to what must be proved.

"The substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt". *McCarthy v. De Armit*, 99 Pa. St. 63. 69, quoted with approval in the *Carroll* opinion, 267 U.S. at 161. And

this "means less than evidence which would justify condemnation" or conviction, as Marshall, C.J., said for the court more than a century ago in *Locke v. United States*, 7 Cranch 339, 348. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where "the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that "an offense has been or is being committed." *Carroll v. United States*, 267 U.S. 132, 162.

The facts in the instant case disclosed that the police were notified that an armed robbery had been committed at a supermarket. Upon investigation they learned that a metal box had been taken from the market for use in transporting the loot which consisted of a substantial amount of cash and \$900.00 worth of government checks. Since the date of the robbery, the police had been investigating this robbery which was in a series of such crimes. On July 28, the first real break came to them from their investigation. At two o'clock in the morning of that day, Lieutenant Bonaccorsy, who was in charge, received information from an informer confirming that four men were involved in the crime; and that, although at the particular moment, the informer could not name them, he would advise the officer of their whereabouts and their names very shortly. The following morning, July 29, 1953, the informer personally conferred with the officer and told him that one of the participants was the appellant who was in an apartment in Southeast Washington in the District of Columbia with several other people. The informer then advised the officer that he would lead them to the apartment building and show them the apartment. This he did. The informer also advised the officer that appellant was making plans to leave town. The officer had good reason to believe the informer because he knew him and had received other information valuable to the police on prior occasions which had proved reliable and true. After the informer pointed out the apartment, the officer caused the place to be surrounded because

of the nature of the crime and the apparent possibility of easy egress through windows and back doors.

Having also learned that a metal box of which he had a description and seen a picture, the officer, upon gaining access to the apartment looked around and saw a metal box closely resembling the one used in the robbery. This occurred immediately after he had placed appellant under arrest. He also saw cartridges in open view and upon asking one question was directed to the gun, which was under a pillow upon a bed. A search was then made of the premises.

The officer stated that his "main purpose was to arrest the defendant Wrightson" whom he did not know but knew by name (R. 168).

In *Gillian v. United States*, 189 F. 2d 321 (6th Cir. 1951), the court stated at page 323:

"The question presented is not whether probable cause existed before the automobile was stopped and the officers talked with appellant. The question is whether the combination of what the officers saw with the reliable information they had received is probable cause to justify the search."

Although the stopping of appellant's car was not an arrest nor was any intent to apprehend appellant or take him into custody, the court continued:

"After commencement of the search, which was after the car had been stopped, reasonable grounds existed for believing a felony was being committed, and the subsequent arrest was valid.

"Hearsay evidence is not to be eliminated as a basis, together with other circumstances, for probable cause justifying a search." (citations omitted).

In *United States v. Heitner*, 149 F. 2d 105 (2d Cir. 1945), cert. denied, 326 U.S. 727, reh. denied, 326 U.S. 809, the court stated (P. 106):

"It is well settled that an arrest may be made upon hearsay evidence;¹ and indeed, the 'reasonable cause' necessary to support an arrest cannot demand the same strictness of proof as the accused's guilt upon a

trial, unless the powers of police officers are to be so cut down that they cannot possibly perform their duties. It is true that, when they act upon information, it is proper to compel them to disclose its source—subject to some limitation—since otherwise there is no way to test whether they have had ‘reasonable cause’ for the arrest.”

¹ *Carroll v. United States*, 267 U.S. 132, 160, 161, 45 S. Ct. 280, 69 L. Ed. 543, 39 A.L.R. 790; *Dumbra v. United States*, 268 U.S. 435, 441, 45 S. Ct. 546, 69 L. Ed. 1032; *Husty v. United States*, 282 U.S. 694, 700, 701, 51 S. Ct. 240, 75 L. Ed. 629, 74 A.L.R. 1407; *Wisniewski v. United States*, 6th Cir., 47 F. 2d 825; *Strom v. United States*, 9th Cir., 50 F. 2d 547; *Somer v. United States*, 2nd Cir., 138 F. 2d 790 (semble); *One Truck v. United States*, 6th Cir., 140 F. 2d 255.

This proposition of law was followed in the case of *Cannon v. United States*, 158 F. 2d 952 (2d Cir. 1947) where the court said:

“We are also in no doubt that the testimony of the officers that they had information which they believed was reliable, was sufficient *in itself* to justify the search.” (Citations omitted, emphasis supplied).

It was followed again in the case of *Li Fat Tong v. United States*, 152 F. 2d 650, (2d Cir. 1948) where the court stated on page 652:

“We, recently held, however, in *United States v. Heitner*, 2 Cir., 149 F. 2d 105, 106 that an arrest may be made upon hearsay evidence and cited as authority the ruling in [cases cited in footnote on page — of this brief].

* * * *

There is no reason to suppose that hearsay evidence derived from an informer is not as competent evidence on which to show probable cause for an arrest as any other proof. The weight to be given it is a matter for the sound discretion of the court which was exercised on the motion to suppress. We hold there was no error in declining to compel the disclosure of the names of informers.”

The Government invites the Court’s attention to the language set forth in the case of *McGuire v. United States*, 273 U.S. 95 (1927), where the Supreme Court stated at page 99:

“* * * We are concerned here not with [the police officers] liability but with the interest of the Government in securing the benefit of the evidence seized, so far as may be possible without sacrifice of the immunities guaranteed by the Fourth and Fifth Amendments. A criminal prosecution is more than a game in which the Government may be checkmated and the game lost merely because its officers have not played according to rule.”

One of the questions presented to this Court is the effect of the arrest without warrant. The courts have stated that the relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. *Martin v. United States*, 183 F. 2d 436, 440 (4th Cir. 1950). We submit that under the facts at bar, the arrest and the search were reasonable. See *Cradle v. United States*, 85 App. D.C. 315, 178 F. 2d 962 (1949); and *Shore v. United States*, 60 App. D.C. 137, 49 F. 2d 519 (1931).

II

Appellant, Having Failed to Sustain His Burden of Proof That He Was the Owner of the Apartment or That He Had a Proprietary Therein or That He Owned the Evidentiary Matter (in Fact He Denied Any Ownership) Cannot Now Claim an Illegal Search and Seizure.

It has been held by the courts that where a defendant does not claim any ownership in property seized and if he has no proprietary interest or ownership in the real property alleged to have been illegally searched, he cannot claim protection under the Fourth Amendment of the Constitution of the United States. *Gibson v. United States*, 80 U.S. App. D.C. 81, *Cradle v. United States*, 85 U.S. App. D.C. 315, 178 F. 2d 962, and *Irvine v. California*, 347 U.S. 136. Under this rule of law, the burden is upon the one asserting a violation of his constitutional rights to prove his ownership of the premises or a proprietary interest therein. *United States v. Shelton*, 59 F. Supp. 273 (D.C.E.D. Ky. 1945) and *United States v. Daniels*, 10 F.R.D. 225 (D.C.N.J. 1950). In the instant case, appellant failed to produce any evidence to that effect. In fact, appellant failed to sub-

mit an affidavit in support of his contention at the time he filed his motion.

At the first preliminary hearing upon the motion to suppress, held before Judge McGarraghy, the following testimony was given by appellant on direct examination (R. 185):

Q: Were you living there; this was your home?

A: This was my wife's apartment. She had gone to California. I had paid her for the furniture in the apartment to give her money to go to California and I was staying there until I could dispose of the furniture.

* * *

Q: Was it your intention to remain there?

A: No, sir. No. My intention was to sell the furniture and *move back* home with my people. (R. 186, Emphasis supplied)

* * *

Upon cross examination he testified (R. 187):

Q: And had you been living at that apartment prior to her going to California?

A: No. I wasn't living there.

Although the trial judge at the first preliminary hearing assigned no reason for denying the motion to suppress, in view of appellant's admission that he had been convicted of four previous robberies, it is a reasonable inference that the judge had a poor opinion of appellant's credibility and could believe that appellant had no property right or proprietary interest in the apartment. At the second preliminary hearing, on the day of the trial, appellant did not take the stand.

To further support the Government's contention that appellant had no proprietary interest in the apartment, the Court's attention is directed to appellant's trial testimony (R. 94, 105):

"I told him [the police officer] that it was Littlefield's room."

* * *

Q: Now whose apartment was this?

A: I think the apartment was registered under my former wife's name. (Emphasis supplied).

Q: You think it was?

A: That is right.

Q: You don't know?

A: No.

* * *

Q: Did you ever have any place of business?

A: I operated my paint business from my home, from my mother's house.

He further stated that he and Littlefield had an apartment previous to this one and they gave it up because they were going to stay there until the furniture was sold (R. 107). It could easily be inferred that this was done to save himself some rent money since the rent was already paid up by his former wife whom he had helped depart for better climes. He gave no testimony that he had paid rent or was the lessee or sub-lessee or owner of the apartment or otherwise had a proprietary interest therein. Mere presence in the apartment, absent a showing of the above, is not sufficient to claim a personal violation of his rights under the Fourth Amendment. See *Cradle v. United States, supra*. In his testimony, appellant disclaimed any ownership of the gun or of the metal box (R. 111, 121). In fact, he stated that the box was evidently Littlefield's who had his own room and that the gun belonged to Grantipilas, another occupant of the apartment.

Under all these facts before two judges who had the opportunity to observe the witnesses and weigh their credibility plus the subsequent trial testimony which in effect bolsters the hearing judge's decision on the motion to suppress, it is apparent that the arrest, the search and the seizure were not illegal nor unreasonable.

It is to be noted that appellant also raises the point that he was prejudiced by the denial of his motion for mistrial made during the court of Lieutenant Bonaccorsy's testimony (Br. at p. 5). However, a study of the pertinent portions of the record (R. 230), reveals that the misstatement by the officer as to the name of store involved in the theft

did not mislead the jury and is not of such nature as would compel reversal.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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JOINT APPENDIX

192

Filed in Open Court Aug. 24, 1953

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled July 6, 1953, Sworn in on
July 7, 1953

Criminal No. 1330-'53

Grand Jury No. 1128-53
1115-53
1134-53
1262-53

Robbery (22 D.C.C. 2901)

THE UNITED STATES OF AMERICA

v.

CHARLES B. CARRIKER, SAMUEL D. WRIGHTSON, JR., GEORGE
E. LITTLEFIELD, RONALD COUCH

Indictment

The Grand Jury charges:

On or about July 17, 1953, within the District of Columbia, Charles B. Carriker, Samuel D. Wrightson, Jr., George E. Littlefield and Ronald Couch, by force and violence and against resistance and by sudden and stealthy seizure and snatching and by putting in fear, stole and took from the person and from the immediate actual possession of William H. Soper, property of Square Deal Market Co., Inc., a body corporate, of the value of about \$7,000.00, consisting of the following: seven thousand dollars in money; said Charles B. Carriker, Samuel D. Wrightson, Jr., George E.

Littlefield and Ronald Couch each being then and there armed with a pistol.

LEO A ROVER

*Attorney of the United States
in and for the District of Co-
lumbia*

A TRUE BILL:

* * * * *

193

Filed Aug. 27, 1953

Plea of Defendant

On this 27th day of August, 1953, the defendants Charles B. Carriker, Samuel D. Wrightson, George E. Littlefield, Ronald Couch, appearing in proper person and by his attorney #1. & #4. Eugene Schubert, Esq., #3. John T. Bonner, #2. Milton Conn being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

Each defendant is remanded to the District of Columbia Jail.

By direction of

JAMES R. KIRKLAND

Presiding Judge

Criminal Court #1

* * * * *

194

Filed Oct. 27, 1955

Motion to Dismiss Indictment and Discharge Defendant

Comes now the defendant, Samuel Wrightson, through his attorney and respectfully moves this Honorable Court to dismiss the indictment and discharge the defendant in the above-entitled cause and for grounds therefore, respectfully states:

1. The defendant has been deprived of his rights as guaranteed by the Sixth Amendment of the Constitution of the United States in that the conviction of said defendant in the above-entitled cause was reversed and remanded by the

Circuit Court of Appeals for the District of Columbia in a decision handed down on the 10th day of March, 1955.

2. Since said date the defendant has been in the custody of the government in the Federal Penitentiary, Atlanta, Georgia and available for trial, and said cause had been continued at the instance of the government on June 24, 1955, and September 12, 1955.

3. The trial date was set for October 4, 1955, however, the defendant was not returned to this jurisdiction until shortly before that date which necessitated the granting of a continuance upon instance of the attorney for the defendant to enable him to properly prepare the defense. The present trial date is November 15, 1955.

SAUL G. LICHTENBERG
Saul G. Lichtenberg

* * * * *

196

Filed Oct. 27, 1955

Motion to Quash Arrest and to Suppress Evidence

Comes now the defendant, Samuel Wrightson, through his attorney and respectfully moves that this Honorable Court quash the arrest of said defendant and suppress evidence in the above-entitled cause and for grounds therefore respectfully states:

1. The arrest of said defendant was illegal in that it was made without a warrant and without probable cause.

2. The search of defendant's residence and the seizure of evidence therein was illegal in that they were made without a warrant and without probable cause.

SAUL G. LICHTENBERG
Saul G. Lichtenberg

198

Filed Nov. 8, 1955

On this 4th day of November, 1955, came the attorney of the United States, the defendant in proper person and by

his attorneys, Saul G. Lichtenberg, Esquire, and Robert Symonds, Esquire; whereupon the defendant's motions to dismiss indictment and discharge defendant, and, to quash arrest and to suppress evidence, each coming on to be heard, after argument by counsel, are each by the Court denied.

The defendant is remanded to the District of Columbia Jail.

By direction of
JOSEPH C. MCGARRAGHY
Presiding Judge
Criminal Court #1

* * * * *

199

Filed Jan. 4, 1956

On this 4th day of January, 1956, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon the defendant's oral motion for a Judgment of Acquittal is heard, argued, and by the Court denied; thereupon after hearing instructions of the Court, alternate juror Andrew B. Butler is discharged from further consideration of this case. The jury retires to consider their verdict.

The jury returns into Court and upon their oath say that the defendant is guilty as indicted. The case is referred to the Probation Officer of the Court and the defendant is remanded to the D. C. Jail.

By direction of
BURNITA SHELTON MATTHEWS
Presiding Judge
Criminal Court #1

* * * * *

200

Filed Jan. 9, 1956

Judgment and Commitment

On this 6th day of January, 1956 came the attorney for the government and the defendant appeared in person and by counsel, Saul Lichtenberg, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of robbery as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) years and Six (6) months to Ten (10) years and Six (6) months; said sentence to take effect at the expiration of the sentence imposed in Criminal Case No. 1331-53.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

BURNITA SHELTON MATTHEWS,
United States District Judge.

* * * * *